

1 GIBSON, DUNN & CRUTCHER LLP
2 Orin Snyder (*pro hac vice*)
osnyder@gibsondunn.com
200 Park Avenue
3 New York, NY 10166-0193
Telephone: 212.351.4000
4 Facsimile: 212.351.4035

5 Kristin A. Linsley (SBN 154148)
klinsley@gibsondunn.com
6 Martie Kutscher (SBN 302650)
mkutscherclark@gibsondunn.com
7 555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
8 Telephone: 415.393.8200
Facsimile: 415.393.8306

9 *Attorneys for Defendant Facebook, Inc.,*

10 GIBSON, DUNN & CRUTCHER LLP
11 Deborah Stein (SBN 224570)
dstein@gibsondunn.com
12 333 South Grand Avenue
13 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
14 Facsimile: 213.229.7520

15 Joshua S. Lipshutz (SBN 242557)
jlipshutz@gibsondunn.com
16 1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: 202.955.8500
Facsimile: 202.467.0539

17 IN RE: FACEBOOK, INC. CONSUMER
18 PRIVACY USER PROFILE LITIGATION,

19 This document relates to:

20 ALL ACTIONS

21 CASE NO. 3:18-MD-02843-VC

22 **FACEBOOK, INC.'S AMENDED
23 ADMINISTRATIVE MOTION TO FILE
24 UNDER SEAL SPECIAL MASTER'S
25 ORDER AND EXHIBITS THERETO**

1 Pursuant to Civil Local Rules 7-11 and 79-5, Facebook, Inc. (“Facebook”) hereby submits this
 2 Amended Administrative Motion to File Under Seal the Special Master’s August 19, 2022 Order
 3 Regarding Plaintiffs’ Request for Leave to Move for Reconsideration of Order Re: Motion to Compel
 4 Production of Documents Related to Protiviti Assessment and the Exhibits thereto (the “Special
 5 Master’s Protiviti Order and Exhibits”). For the reasons explained below, there is good cause to seal
 6 permanently this information and Facebook’s request is narrowly tailored under the circumstances.

7 **I. Background**

8 On August 24, 2022, the Special Master indicated that this Court requested all Special Master
 9 Orders to be filed on the public docket that same day. Because Facebook was unable to immediately
 10 confirm whether certain information within the Special Master’s Protiviti Order and Exhibits required
 11 sealing, Facebook requested that the Court allow it to file the Special Master’s Protiviti Order and
 12 Exhibits under seal temporarily. Dkt. 1010. Facebook hereby submits its amended statement and
 13 supplemental declaration in support of sealing these materials.

14 **II. The Good Cause Standard Applies Because the Motion Is Unrelated to the Merits**

15 Courts seal information in non-dispositive motions so long as there is good cause to do so
 16 because public disclosure of the information would cause harm or prejudice, and the request is narrowly
 17 tailored. *Doe v. Walmart, Inc.*, 2019 WL 636362, at *1–2 (N.D. Cal. Feb. 11, 2019). Here, the Special
 18 Master’s Protiviti Order and Exhibits are related to the discovery record, not the merits of this action,
 19 so the good cause standard applies.

20 **III. There Is Good Cause for Facebook’s Proposed Redactions and Sealing**

21 Facebook asks the Court to permanently seal the following categories of information:

22 *(i) Confidential information regarding Facebook’s proprietary data systems and data*
 23 *storage and processing practices.* As set forth in the Supplemental Falconer Declaration and
 24 Amended Proposed Order, Facebook asks the Court to seal confidential information regarding
 25 details about the data systems that house specific data and how Facebook stores, tracks, preserves,
 26 deletes, and processes data. This information involves key components of Facebook’s business
 27 that set it apart and ahead of its competitors and reveals confidential technical information about
 28 its data systems and proprietary methods for storing and processing data. Supplemental Falconer

1 Decl. ¶ 4. If this information were publicly disclosed, competitors could use it to improve their
 2 own methods for managing high volumes of user data or for tracking user data across data systems.
 3 *Id.* Courts routinely seal commercially sensitive information that “competitors would be able to
 4 take advantage of” and use unfairly if disclosed. *See, e.g., Asetek Danmark A/S v. CMI USA, Inc.*,
 5 2015 WL 4511036, at *2 (N.D. Cal. July 23, 2015). Additionally, hackers and other bad actors
 6 could use this information to better understand Facebook’s data systems and target specific
 7 repositories of data, potentially harming both Facebook and its users. Supplemental Falconer
 8 Decl. ¶ 4. The Court has previously found good cause to seal this type of information. *See, e.g.*,
 9 Dkt. 813 at 0026–29 (requesting sealing data system names); Dkt. 844 (granting motion to seal).

10 ***(ii) Confidential information regarding Facebook’s privacy and platform policy***
 11 ***enforcement practices.*** Facebook asks the Court to seal confidential information, set forth in the
 12 Supplemental Falconer Declaration and Amended Proposed Order, regarding Facebook’s privacy
 13 and platform enforcement practices. Disclosure of information about Facebook’s decision-making
 14 process for evaluating apps and developers that may be violating its policies would reveal
 15 confidential details of Facebook’s internal business operations. Supplemental Falconer Decl. ¶ 5.
 16 If this information were revealed, bad actors could use it to attempt to circumvent and evade
 17 Facebook’s enforcement strategies, potentially harming both Facebook and its users. *Id.* The
 18 Court has previously sealed similar information for the same reasons. *See, e.g.*, Dkt. 812
 19 (requesting sealing of similar information); Dkt. 844 (granting motion to seal).

20 **IV. The Proposed Redactions Are Narrowly Tailored**

21 Facebook’s proposed redactions are narrowly tailored because the redactions are limited to the
 22 narrow and limited categories of confidential and proprietary information set forth above. *See Dunbar*
 23 *v. Google, Inc.*, 2013 WL 12216625, at *1 (N.D. Cal. Aug. 18, 2013) (granting sealing requests that
 24 were “narrowly tailored to protect . . . proprietary information”).

25 * * *

26 For these reasons, Facebook respectfully requests that the Court permanently seal the
 27 confidential information contained in certain materials in the Opposition and supporting materials.
 28

1 Dated: August 31, 2022

GIBSON, DUNN & CRUTCHER, LLP

2 By: /s/ Deborah Stein
3 Deborah Stein

4 Orin Snyder (*pro hac vice*)
5 osnyder@gibsondunn.com
200 Park Avenue
6 New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

7 Deborah Stein (SBN 224570)
8 dstein@gibsondunn.com
333 South Grand Avenue
9 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

10 Joshua S. Lipshutz (SBN 242557)
11 jlipshutz@gibsondunn.com
12 1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: 202.955.8500
Facsimile: 202.467.0539

14 Kristin A. Linsley (SBN 154148)
15 kkinsley@gibsondunn.com
16 Martie Kutscher (SBN 302650)
mkutscherclark@gibsondunn.com
555 Mission Street, Suite 3000
17 San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

19 *Attorneys for Defendant Facebook, Inc.*